

THIRD DIVISION

[G.R. NO. 167003, October 23, 2006]

**PANFILO A. ABAIGAR, PETITIONER, VS. JESUS A. ABAIGAR,
RESPONDENT.**

D E C I S I O N

CARPIO-MORALES, J.:

On challenge are the Resolutions of the Court of Appeals dated November 30, 2004^[1] and February 4, 2005^[2] dismissing herein petitioner's Petition for Review, its certification against forum shopping having been signed merely by his counsel as petitioner had, before its filing, left for the United States.

Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, provides:

SEC. 5. *Certification against forum shopping.* "€ The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but **shall be cause for the dismissal** of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x (*Italics in the original; emphasis supplied*)

Similarly, Sections 2 and 3, Rule 42^[3] state:

SEC. 2. *Forms and contents.* - x x x

The **petitioner** shall also **submit together with the petition a certification under oath** that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or

agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

SEC.3. *Effect of failure to comply with requirements.* “**The failure of the petitioner to comply with any of the foregoing requirements** regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and **the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.** (Italics in the original; emphasis supplied)

A certification by counsel and not by the principal party himself is no certification at all.^[4] It is a defective certification which is tantamount to non-compliance with the requirement prescribed by the Rules of Court and constitutes a valid cause for the dismissal of the petition.^[5] This is because it is the petitioner and not the counsel who is in the best position to know whether he actually filed or caused the filing of the petition.^[6] The appellate court, strictly speaking, was, therefore, correct when it dismissed the petition in this case. There have been instances, however, that the Rule on the matter has been relaxed.

Thus, in *Donato v. Court of Appeals*^[7] where the therein petitioner was, at the time of he filing of the petition, in the United States where he was residing, the Rule on certification against forum shopping was relaxed.

The petition for review filed before the CA contains a certification against forum shopping but said certification was signed by petitioner's counsel. In submitting the certification of non-forum shopping duly signed by himself in his motion for reconsideration, petitioner has aptly drawn the Court's attention to the physical impossibility of filing the petition for review within the 15-day reglementary period to appeal considering that he is a resident of 1125 South Jefferson Street, Roanoke, Virginia, U.S.A. were he to personally accomplish and sign the certification.

We fully agree with the petitioner that it was physically impossible for the petition to have been prepared and sent to the petitioner in the United States, for him to travel from Virginia, U.S.A. to the nearest Philippine Consulate in Washington, D.C., U.S.A., in order to sign the certification before the Philippine Consul, and for him to send back the petition to the Philippines within the 15-day reglementary period. Thus, we find that **petitioner has adequately explained his failure to personally sign the certification which justifies relaxation of the rule.** ^[8]
(Emphasis and underscoring supplied)

In *Sy Chin v. Court of Appeals*^[9] and in the recent case of *Paul Lee Tan v. Paul Sycip and Merritto Lim*^[10] where the therein petitions before the Court of Appeals bore defective Verifications and Certifications of Non-forum Shopping, this Court excused the procedural lapse in the interest of substantial justice.

In fine, when the interest of substantial justice overrides the procedural lapse, the Rule on the matter may be relaxed. An examination of the records of the case is thus in order to determine whether a relaxation of the Rule is warranted in the